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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/040,144	01/03/2002	Kevin J. Low	5814-56	9388

7590 01/08/2004

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EXAMINER

TRAN, HIEN THI

ART UNIT	PAPER NUMBER
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1764

DATE MAILED: 01/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/040,144

Applicant(s)

LOW ET AL.

Examiner

Hien Tran

Art Unit

1764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 8-19 and 22-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 20 and 21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-24 are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 January 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election of Group I, claims 1-7, 20-21, in paper filed 10/17/03 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).
2. Claims 8-19, 22-24 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in paper filed 10/17/03.

Drawings

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: "28" (page 7, line 13). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.
4. The drawings have not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the drawings to comply with CFR 1.84(p)(5), e.g. they should include the reference sign(s) mentioned in the specification and vice versa.

Specification

5. The disclosure is objected to because of the following informalities:
On page 4, line 10 --ratio-- is misspelled.

On page 7, line 9 "planer" should be changed to --planar--; in line 13 "28" should be changed to --24--.

On page 14, line 6 "an bearing" should be changed to --a bearing--.

Appropriate correction is required.

6. The specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

Claim Rejections - 35 USC § 112

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 2-3, 5-7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 2, it is unclear as to what applicants are attempting to recite as "the element" has no clear antecedent basis and is not a part of the apparatus.

In claim 3, it is unclear as to which member is implied. See claims 5-6 likewise.

In claim 7, line 1 "the housing" lacks positive antecedent basis.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Art Unit: 1764

10. Claims 1-5, 20-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Jurgensmeyer (5,788,729).

Jurgensmeyer discloses an apparatus comprising: a support 35, 36; a plurality of members 52 extending from the support, each member spaced apart from the next member and defining an abutment surface; and wherein the abutment surface defines a bearing surface adapted to engage the element, the aspect ratio (width/thickness) reads on the members 52 (Fig. 2, col. 2, line 7 to col. 3, line 47).

Instant claims 1-5, 20-21 structurally read on the apparatus of Jurgensmeyer.

11. Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Epelman (3,556,735).

Epelman discloses an apparatus comprising: a support 1; a plurality of members 4', 4'', etc. extending from the support, each member spaced apart from the next member and defining an abutment surface; and wherein the abutment surface defines a bearing surface adapted to engage the element, the aspect ratio (width/thickness) reads on the members 4, 4'' (Fig. 1).

Instant claims 1-5 structurally read on the apparatus of Epelman.

12. Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Lankenau et al (3,913,890).

Lankenau et al discloses an apparatus comprising: a support 10; a plurality of members 25 extending from the support, each member spaced apart from the next member and defining an abutment surface; and wherein the abutment surface defines a bearing surface adapted to engage the element, the aspect ratio (width/thickness) reads on the members 25 (Fig. 3).

Instant claims 1-5 structurally read on the apparatus of Lankenau et al.

Claim Rejections - 35 USC § 103

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

15. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jurgensmeyer (5,788,729) or Epelman (3,556,735) or Lankenau et al (3,913,890).

The apparatus of Jurgensmeyer or Epelman or Lankenau et al is substantially the same as that of the instant claim, but fails to disclose provision of aerodynamic orientation of the members.

However, the specific orientation of the member (angle with respect to the support) is not considered to confer patentability to the claim. The precise angle of the member would have been considered a result effective variable by one having ordinary skill in the art. As such, without more, the claimed orientation can not be considered "critical". Accordingly, one having ordinary skill in the art would have routinely optimized the angle of member in the system to obtain the desired benefits attendant therewith (*In re Boesch*, 617 F.2d. 272, 205 USPQ 215

Art Unit: 1764

(CCPA 1980)), and since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art (*In re Aller*, 105 USPQ 233).

16. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jurgensmeyer (5,788,729) in view of Gebert et al (4,422,790).

The apparatus of Jurgensmeyer is substantially the same as that of the instant claim, but fails to disclose provision of a housing with a hinge.

However, Gebert et al shows the conventionality of providing a housing for the filter element having a hinge.

It would have been obvious to one having ordinary skill in the art to provide a housing with a hinge as taught by Gebert et al in the apparatus of Jurgensmeyer to facilitate the insertion and removal of the filter element thereof.

Conclusion

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hien Tran whose telephone number is (571) 272-1454. The examiner can normally be reached on Tuesday-Friday from 7:30AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Caldarola can be reached on (571) 272-1444.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Application/Control Number: 10/040,144

Art Unit: 1764

HT

December 29, 2003

Page 7

Hien Tran

Hien Tran

Primary Examiner

Art Unit 1764